IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 297 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME TAX

Versus

CAMA MOTORS PVT LTD

Appearance:

1. INCOME TAX REFERENCE No. 297 of 1987
MR AKIL QURESHI FOR MR MANISH R BHATT for Applicant.
MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 09/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 At the instance of the revenue, the following question has been referred to this Court for its opinion under the provisions of Section 256(1) of the Income Tax Act,1961 (hereinafter referred to as 'the Act') by the Income Tax Appellate Tribunal, Ahmedabad Bench, "B".

"Whether, in law and on facts the assessee was entitled to a claim of Rs.2,87,516/- being the provision on account of the value of stolen jeeps?"

2 Learned Advocate Mr.Akil Qureshi has appeared for the applicant whereas learned Advocate Mr.J.P.Shah has appeared for the respondent-assessee.

3 The facts giving rise to the Reference in nutshell are as under :

4 The assessee Company is a Limited Company which is dealing in vehicles. During the assessment year 1992-93 four jeeps belonging to the Company had been stolen. In the circumstances, the assessee claimed loss of Rs.2,87,516/-. The said claim was not allowed by the Assessing Officer because, according to him there was a reasonable chance for the assessee to recover the said four vehicles. In the circumstances, the assessee filed an appeal before the C.I.T.(Appeals) but the said appeal was dismissed. In the circumstances an appeal was filed before the Tribunal by the assessee. The Tribunal had allowed the appeal and thereby the amount of loss claimed by the assessee was allowed for the relevant assessment year.

5 Learned Advocate Mr.Akil Qureshi appearing for the revenue has submitted that though the vehicles had been stolen on 1/5/1981, on account of an interim order passed by the High Court, possession of the vehicles in question was given to the assessee and there were all chances that the vehicles in question might be restored to the assessee in the capacity as an owner of the vehicles. It has been therefore submitted by him that the amount of loss claimed by the assessee was not justified as the vehicles had been traced and there were all chances that the assessee would get back the vehicles.

6 On the other hand, learned Advocate Mr.J.P.Shah appearing for the assessee has submitted that the vehicles were stolen on 1/5/1981 and even on the date

when the Tribunal had passed an order in appeal on 26/9/1986, possession of the vehicles was not given by the Court to the assessee in the capacity of an owner of the vehicles. According to him, as the vehicles had been stolen on 1/5/1981, loss had been caused to the assessee and therefore the assessee had rightly claimed the said loss. It has been further submitted by him that if in a subsequent year any amount is received by the assessee or if the vehicles are restored to the assessee, the said amount can be very well taxed by the revenue under the provision of section 41(1) of the Act.

7 We have heard the learned Advocates and have also gone through the judgments referred to by them. Looking to the facts of the case, in our opinion, it is not necessary to discuss the judgments referred to by the learned Advocates as ratio of the judgments cannot be disputed.

8 It is not in dispute that the vehicles had been stolen on 1/5/1981 and we are concerned only with the assessment year 1982-83. It is also not in dispute that the possession of the said vehicles was given to the assessee only as a Trustee so as to see that the vehicles remain in a good condition and they do not get rusted in possession of the Police because it is a known fact that normally muddamal vehicles retained by the police authorities are not kept in good condition. It is also important to note that though the assessee was given possession of the vehicles, the assessee was not permitted to deal with the said vehicles or even use the said vehicles. In the circumstances, by no stretch of imagination it can be said that the vehicles were in possession of the assessee in its capacity as an owner of the vehicles.

9. As the vehicles had been stolen, the loss had already occurred to the assessee on the date on which the vehicles had been stolen. The assessee had rightly made a provision for the said loss and it is also not in dispute that the said vehicles were to be sold to the Executive Engineer, State of Gujarat and as the vehicles had been stolen, the assessee could not give delivery of the vehicles to the Executive Engineer. Looking to the above facts, in our opinion, the Tribunal was absolutely justified in coming to the conclusion that the assessee was entitled to make provision for the said amount during the year when the loss was suffered. It is true that there were chances of getting vehicles back or being compensated by someone for the loss which the assessee

had suffered. In such an eventuality, the provision of section 41(1) of the Act would have taken care and the assessee would have been duly taxed on the amount which it might have received at a future point of time.

10. We do not agree with the submission made by learned Advocate Mr.Akil Qureshi, appearing for the revenue that there were chances for the assessee to get the vehicles back and therefore the amount claimed as loss should be allowed. As recorded hereinabove the vehicles had been stolen on 1/5/1981 and even on the day when the Tribunal had passed the final order in Appeal i.e. 26/9/1996, the assessee had not got the possession of the vehicles in its capacity as an owner. This fact clearly shows that the provision made by the assessee for the loss was absolutely justifiable.

11. In our opinion, the assessee was absolutely right while making a provision for the loss at the time when he came to know about the loss. He had therefore rightly made a provision during the relevant assessment year and had claimed the loss and the Tribunal had also rightly allowed the loss claimed by the assessee.

12. In view of the above facts, we are of the view that the Tribunal was justified in allowing the appeal and the question which has been referred to us is answered in the affirmative i.e. in favour of the assessee and against the revenue.

13. The Reference thus stands disposed of with no order as to costs.

Sd/- Sd/-
(A.R.Dave,J) (D.A.Mehta,J)
m.m.bhatt